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PRESIDING OFFICER'S
RULING NO. R2000-1/128

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POSTAL RATE COMMISSION
OFFICE OF THE PRESIDENT

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

Postal Rate and Fee Changes

Docket No. R2000-1

PRESIDING OFFICER'S RULING
OVERRULING STAMPS.COM'S OBJECTION
TO PROVIDING ACCESS TO PROTECTIVE MATERIAL

(Issued August 22, 2000)

On August 15, 2000, Stamps.com filed an objection to the application of Douglas F. Carlson for access to Stamps.com material provided under protective conditions.¹

Mr. Carlson filed for access to the Stamps.com material on August 14, 2000.²

The objection requests that Mr. Carlson be denied access to the material, or that Mr. Carlson be required to explain why access should be provided. Stamps.com states that Mr. Carlson has not identified any reason or justification for being granted access, and that the material was not provided in response to his discovery requests. Also, Mr. Carlson is not acting as an attorney in this proceeding, and therefore is not subject to ethical and disciplinary rules that would serve to enforce the protective order. Stamps.com alleges that other parties will adequately represent Mr. Carlson's interest in this proceeding. Furthermore, without a compelling reason, Mr. Carlson should not be permitted access because this material is not intended to be made available for inspection and review by the general public.

¹ Stamps.com's Objection to Providing Access to Stamps.com's Protective Material to Douglas F. Carlson (filed August 15, 2000).

² Douglas F. Carlson Notice of Filing of Certifications for Access to Documents Pursuant to POR R2000-1/97 and 106 (filed August 14, 2000).

Mr. Carlson filed a response to the objection on August 18, 2000, that effectively answers all of the Stamps.com arguments to deny access, and further states that affirming the objection would deny a participant due process.³ In addition, the Postal Service and OCA filed comments in response to the Stamps.com objection. The Postal Service explains its position with respect to participating in Commission proceedings, protective conditions, and representing the interests of any particular intervenor.⁴ The OCA argues that Mr. Carlson should be given immediate access to the material subject to protective conditions, and concurs with the Postal Service comments on representing the interests of other intervenors.⁵

One point must be clarified after reviewing the Stamps.com objection. Material submitted under protective conditions to the Commission in this rate case is not available for inspection and review by the general public. Each protective conditions document issued in this rate case specifies who is allowed access to the specific material. Generally, access is limited to an employee of the Commission, a participant, or an employee or agent of a participant.⁶ This class is further limited by disallowing access to persons involved in competitive decision making. Furthermore, use of the material is limited to this rate case, with provisions for final disposition of the protective material specified in the protective conditions document.⁷

³ Douglas F. Carlson Response to Stamps.com's Objection to Providing Access to Stamps.com's Material Submitted Under Protective Conditions (filed August 18, 2000).

⁴ Comments of the United States Postal Service Concerning Stamps.com's Objection to Intervenor Douglas Carlson Obtaining Access to Material Submitted by Stamps.com Under Protective Conditions (filed August 17, 2000).

⁵ Office of the Consumer Advocate Answer to Stamps.com's Motion to Deny Access to Douglas F. Carlson (filed August 22, 2000).

⁶ Individual protective condition documents must be reviewed to determine the specific provisions.


⁷ Participants are reminded that documents submitted to the Commission, including briefs, that contain information from other documents submitted under seal, must also be submitted under seal.

Mr. Carlson has intervened in this rate case as a limited participant.⁸ The listing of all intervenors in this case is a public record. Stamps.com was on notice at the time the material was submitted of the potential persons that may request access. Stamps.com has not alleged that Mr. Carlson is involved in competitive decision making, or that there is a justifiable risk that he will not comply with the protective conditions. Therefore, Mr. Carlson is in the class of persons that are allowed access, Stamps.com was on notice of the potential class at the time material was submitted, and Stamps.com has not presented a conventional argument to deny access.

Stamps.com's other arguments are not persuasive. The protective conditions in question do not require Mr. Carlson to provide a reason or justification prior to obtaining access. There is not a requirement that material submitted under protective conditions only be divulged to participants that initially made the discovery request. There is not a requirement that material submitted under protective conditions only be divulged to an attorney subject to disciplinary rules. Furthermore, there is no substantiation of the Stamps.com allegation that another party will represent the interests of Mr. Carlson.

RULING

Stamps.com's Objection to Providing Access to Stamps.com's Protective Material to Douglas F. Carlson (filed August 15, 2000) is overruled. Douglas F. Carlson may access the Stamps.com material submitted under protective conditions.


Edward J. Gleiman
Presiding Officer

⁸ See Douglas F. Carlson Notice of Intervention as a Limited Participator (filed January 24, 2000). Mr. Carlson has intervened in several proceedings before this Commission and is familiar with complying with Commission directives.